only for his history, but also for his approach to life and the example he left us.

GUARDSMEN AND RESERVISTS FINANCIAL RELIEF ACT OF 2003

SPEECH OF

HON. JOE BACA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, April 21, 2004

Mr. BACA. Mr. Speaker, I rise in support of the Guardsmen and Reservists Financial Relief Act of 2003.

This bill allows military reservists or national guardsmen to make withdrawals from their retirement plans without incurring penalties.

Unfortunately, this bill is a short-term fix for a larger problem.

Why hasn't the Administration and Congress done more to help reservists and soldiers in Iraq?

Our brave men and women are fighting and dying in Iraq. Their families are struggling to get by.

We need to help our soldiers.

We can start by giving targeted pay raises. We can give meaningful tax relief for military families, not tax cuts for the rich that President Bush supports.

We can make sure they receive the benefits and healthcare that they have more than earned!

We can make sure that our veterans, those brave Americans who already gave so much for this country are also taken care of.

Over 500,000 veteran's benefits claims are still pending in the VA. My bill, H.R. 1264, will help reduce this backlog of claims. This is the type of help our soldiers and veterans need!

Our reservists, soldiers, and veterans deserve our help! Let's not keep them waiting any longer!

Congress has to put its money where its mouth is when it comes to taking care of those who help protect this nation. We have no other choice.

EXPLANATORY STATEMENT ON H.R. 4062

HON. DONALD A. MANZULLO

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 22, 2004

Mr. MANZULLO. Mr. Speaker, on March 31, 2004, the House took up consideration and passed H.R. 4062, a bipartisan bill to resolve problems associated with the restrictions imposed by the Small Business Administration on loans made pursuant to §7(a) of the Small Business Act. The bill was then passed by the Senate and signed into law by the President. Since the bill was taken directly to the floor, no committee report accompanies the bill. As Chairman and on behalf of the Ranking Democratic Member, NYDIA M. VELÁZQUEZ, I am submitting for insertion into the RECORD, the attached explanation of the bill by its sponsors. We would expect the Administrator, in implementing the provisions of H.R. 4062, to accord the enclosed explanation the same weight in divining congressional intent that the Administrator would give to a committee report on a bill that first went through a mark-up prior to floor consideration.

JOINT EXPLANATORY STATEMENT ON H.R. 4062

Filed by Chairman MANZULLO for himself and Ranking Democratic Member VELÁZQUEZ

Section 1. Additional Temporary Extension of Authorization

Temporary authorizations are needed to ensure continued operation of certain programs authorized by the Small Business Act and Small Business Investment Act of 1958. This section extends those programs while the House and Senate work out their differences on a broader reauthorization package.

Section 2. Extension of Certain Fee Authorizations

The qualified state and local development company (referred to in this statement as ''certified development company'' or ''CDC'') program authorized by Title V of the Small Business Investment Act of 1958 operates on fees charged by the Administrator to lenders. Those fees need to be reauthorized to prevent the program from ceasing operation. Given the complexity of the financing arrangements loans made pursuant to Title V, CDCs and small businesses need sufficient time to develop the appropriate financing packages and submit applications to the Administrator. To accommodate the needs of lenders and borrowers under Title V, the sponsors determined that an extension of the fee authorization through the end of the fiscal year would be appropriate. Furthermore, the sponsors believe that if the recent problems in the loan programs authorized by 7(a) of the Small Business Act were resolved through the end of this fiscal year, equity demands that CDCs be able to operate unencumbered for the same period.

Section 3. Fiscal Year 2004 Purchase and Guarantee Authority under Title III of the Small Business Investment Act of 1958

The Small Business Investment Company (''SBIC'') program operates without the use of appropriated funds. Fees and profits are used to cover the cost of the program, including coverage of losses in investment portfolios. While the sponsors believe that the fees authorized for the purchase of securities and debentures would allow the program to continue full operation without modification to the authorization levels, clarification to ensure that the program could continue operations was an appropriate course of action. To avoid any possible confusion or action by the Administrator to curtail the operation of the program, the sponsors extended the authorizations for both the purchase of participating securities and guarantees of debentures at FY 2003 levels for the rest of the fiscal year.

Section 4. Combination Financing

For a number of years, the Administrator authorized the use of so-called piggyback financing when using the loan program authorized by 7(a) of the Small Business Act. The Administrator defines ''piggyback financing'' as a situation in which ''one or more lender(s) provides more than one loan(s) to a single borrower at or about the same time, financing the same or similar purpose, and where the SBA guarantees the loan secured with a junior lien position.'' Small Business Administration, Standard Operating Procedure 50–10(4)(E), at 20. Furthermore, the Administrator notes that the determination of ''piggyback financing'' requires an assessment of both the lien position and the commonality of purpose. Id.

Earlier in the year, the Administrator, presumably pursuant to the authority set forth in §7(a)(24) of the Small Business Act, made certain policy changes to the operation of the guaranteed loan program. In particular, the Administrator prohibited the use of piggyback financing.

The sponsors believe that ''piggyback financing'' plays a valuable role in the provision of capital to small businesses. This is particularly the case for small businesses requiring larger loans in cyclical sectors of the economy. The financing technique is quite similar to that statutorily authorized in Title V of the Small Business Investment Act of 1958.

Section 4 creates, for the rest of fiscal year 2004, a temporary combination-financing program by adding a new paragraph (31) to §7 of the Small Business Act. The provisions sunset at the end of the fiscal year, i.e., at the end of the day on September 30, 2004.

The sponsors adopted the more formal language ''combination financing'' rather than the term ''piggyback financing.'' The sponsors define ''combination financing'' as a loan consisting of both a commercial loan and a guaranteed loan. A commercial loan is defined as one that has no portion guaranteed by the government. The sponsors intend the term ''combination financing'' to have the same characteristics as ''piggyback financing'' as that term is used in the Small Business Administration's Standard Operating Procedure already cited in this statement.

The authorization of combination financing is limited to those situations in which the small business concern (borrower) obtains both a guaranteed loan pursuant to §7(a) of the Small Business Act and a commercial loan. Again the sponsors intend that the provision should operate in a manner similar to the Small Business Administration's determination that the commercial and guaranteed loans are obtained for the same or similar purposes and the loans are originated and disbursed (in whole or in part) at about the same time.

To ensure that the public fisc is protected even when the Administrator's lien is subordinate to the commercial loan, the sponsors restricted the size of the combination loan to that of the guaranteed loan. In other words, there is a one-to-one ratio between the commercial and guaranteed loans. While the commercial loan cannot exceed the size of the guaranteed loan, the sponsors do not intend to prevent a commercial loan from being smaller than the guaranteed loan.

The sponsors authorize the commercial loan may be made by the lender that is making the guaranteed loan. However, the sponsors also permit the commercial loan to be made by a different lender as long as the loans meet the simultaneity of time and purpose already limned. In addition, the sponsors also authorize lenders designated as ''Preferred Lenders'' by the Administrator to make the commercial loan in such combination financings.

The sponsors also authorize lenders designated as ''Preferred Lenders'' by the Administrator to make the commercial loan in combination financings. In order to expedite the processing of combination financings in these circumstances, it is the sponsors' intent that the Administrator process applications for combination financings submitted by such ''Preferred Lenders'' through the Preferred Lenders Program Processing Center.

The sponsors explicitly authorize the commercial loan to be secured by a lien senior to that of the guaranteed loan. Nothing in this provision prevents the Administrator from continuing or discontinuing this practice after September 30, 2004 unless directed otherwise by statute.

In normal commercial transactions, lenders that take a subordinated lien position on

an asset are compensated for the additional risk through additional upfront fees or by a higher interest rate. The Administrator did not require any additional payments or modification of applicable interest rates for taking a junior position in its ''piggyback financing.'' Section 4 requires the Administrator to charge an upfront fee equal to 0.7 percent of the amount of the commercial loan as reimbursement for the risk associated with taking a subordinate lien position. The sponsors expect that the lender that is benefiting from senior lien position to pay the fee.

While lenders pay all fees charged pursuant to §7(a) of the Small Business Act, some fees are recoverable from borrowers. Lenders may obtain reimbursement of the upfront fees mandated by §7(a)(18) of the Small Business Act from borrowers but are prohibited from recovering from borrowers the annual ongoing fee mandated by §7(a)(23) of the Small Business Act. Since the ultimate beneficiary of the combination financing as authorized by this section is the bank making the commercial loan, the sponsors determined that the lender should be prohibited from recovering that fee and imposed the restriction set forth in §7(a)(23)(B) of the Small Business Act on the payment of the commercial loan fee. The cross-reference to the provision in §7(a)(23) ensures that the lender will be unable to recoup the 0.7 percent from the borrower.

The Administrator had procedures in place for combination financing (styled in the Standard Operating Procedures as ''piggyback financing'') on October 1, 2003, and the Administrator processed combination loan financings in the normal course of business on October 1, 2003. To ensure that the Administrator accept and process combination financing loan applications, the sponsors imposed a requirement that the Administrator must process those loan applications as those loans were processed under the ''piggyback financing'' procedures in effect on October 1, 2003.

The sponsors did not believe that it would be prudent to mandate the issuance of regulations to implement a temporary program, which will sunset in about six months. In fact, the sponsors were concerned that the promulgation process would be sufficiently lengthy and the program would sunset before any regulations were in place. The sponsors recognized that the Administrator would be approving combination financings under the rubric of ''piggyback financings'' in accordance with already extant standard operating procedures. The sponsors believe that these provisions are adequate for immediate issuance of combination financing loans. The sponsors therefore authorize the Administrator to use the standards already in existence upon enactment without the necessity of formal rulemaking. The provision has the additional benefit that industry is well aware of the procedures and standards for business eligibility in the standard operating procedures.

The sponsors recognize that additional standards may be necessary to determine business loan eligibility under this section. The sponsors authorize the Administrator to adopt such additional standards as may be necessary (in order to reduce risk to the government and increase transparency to the private sector) so long as those standards do not unreasonably restrict the availability of combination financing as was available prior to the issuance of any additional standards. Thus, the sponsors expect that the Administrator will make reasonable decisions that may in some ways restrict the availability of combination financing. However, standards that prohibit or reduce by a significant number the combination financings made after the adoption of additional standards would not be within the intention of the sponsors. The sponsors do not expect any new standards adopted by the Administrator to impose significant restrictions on combination financings. The 0.7 percent fee sufficiently compensates the Administrator for the additional risk. Any additional standards should focus on the procedures for processing combination financings or resolving situations that are not adequately addressed under current procedures for ''piggyback financing.''

Section 5. Loan Guarantee Fees

In late December of 2003 and early January of 2004, the Administrator, in part pursuant to the Anti-Deficiency Act, temporarily ceased lending under the loan program established pursuant to §7(a) of the Small Business Act. Shortly after the Administrator halted lending, funds were reallocated enabling the program, but with a mandatory loan cap of $750,000.

This restriction continues to impede the ability of small businesses to obtain capital, expand their businesses, and create jobs. The sponsors recognized the need to reopen the program to its fully authorized levels ($2 million loan maximum with a guarantee up to $1 million). Two options were available for doing this. The first would require additional appropriations. The second would be to raise fees associated with the lending program authorized by §7(a) of the Small Business Act. The sponsors were not sanguine about the prospect of obtaining additional appropriations for fiscal year 2004. So the sponsors reluctantly turned to the second option.

The approach adopted by the sponsors raise, through the end of fiscal year 2004, the annual ongoing fee charged to lenders. The reduction was reauthorized in Pub. L. No. 107–100. The statutory fee is currently set at a 0.5 percent but was reduced temporarily, to encourage the creation of new jobs, in the last reauthorization bill to 0.25 percent. Section 5 raises that level from 0.25 percent to 0.36 percent. The sponsors also eliminate the authority of lenders to retain 0.25 percent of the ongoing fee for loans of less than $150,000. According to the Administrator and the Office of Management and Budget, these fee changes, along with other temporary modifications, raise sufficient funds to operate a guaranteed loan program at a $12.55 billion level without any restrictions on combination financing or caps on loan size.

Section 6. Express Loan Provisions

Section 7(a)(25)(B) authorizes the Administrator to create pilot loan programs. In exercising that authority, the Administrator created an ''Express Loan Pilot Program.'' The program authorizes lenders to use their own forms in submitting requests to the Administrator for the issuance of guarantees. Two significant restrictions are imposed by the ''Express Loan Pilot Program;'' the guarantee cannot exceed 50 percent of the loan and the maximum loan amount is $250,000.

According to the Administrator and the Office of Management and Budget, expansion of the ''Express Loan Pilot Program'' to authorize lenders to make loans up to the statutory maximum of $2 million would contribute to a significant reduction in the subsidy rate. The sponsors adopted this concept to ensure that sufficient funds were made available to reopen the program at expected loan volumes.

Section 6 defines the term express lender as a lender authorized to participate in the ''Express Loan Pilot Program.'' The sponsors do not intend that the Administrator need change any of the requirements for designation as an express lender but is authorized to do so.

Section 6 defines an ''Express Loan'' as one in which the lender utilizes, to the maximum extent practicable, its own analyses of credit and forms. The sponsors fully expect that the conditions under which express loans are made will not vary significantly from those conditions that currently exist under the ''Express Loan Pilot Program.'' However, the sponsors recognize that the Administrator may want to impose some additional conditions on the use of forms or analyses for larger express loans. Nothing in H.R. 4062 prohibits the Administrator from imposing these additional requirements.

Section 6 codifies the existing concept of the Administrator's ''Express Loan Pilot Program.'' In other words, the pilot program is one in which lenders utilize their own forms and get a guarantee of no more than 50 percent.

Subsection 6(b) restricts the program, including the increased loan amount, to those lenders designated as express lenders by the Administrator. Designation as an express lender does not limit the lender to making express loans if the lender has been authorized to make other types of loans pursuant to §7(a) of the Small Business Act. Although a lender may only seek status as an express lender, this subsection was included to ensure that the Administrator not limit the ability of an express lender to seek other lending authority from the Administrator. Nor is the Administrator permitted to change its standards for designating an express lender in a manner that only authorizes the lender to make express loans. To the extent that the lending institution wishes to offer a full range of loan products authorized by § 7(a) and is otherwise qualified to do so, the Administrator shall not restrict that ability on the lender's status as an express lender.

Subsection 6(c) prohibits the Administrator from revoking the designation of any lender as an express lender that was so designated at the time of enactment. This prohibition does not apply if the Administrator finds the express lender to have violated laws or regulations or the Administrator modifies the requirements for designation in a way that the express lender cannot meet those standards. The sponsors do not expect that the Administrator will impose new requirements for express lenders that prohibit them from making loans under other loan programs authorized by the Small Business Act for which they have approval from the Administrator.

Subsection 6(d) temporarily expands the Express Loan Pilot Program to $2 million. After September 30, 2004, the sponsors expect the Administrator to operate the Express Loan Pilot Program according to the standards that were in effect prior to the enactment. Since the Administrator had the authority to modify or alter the pilot program prior to the enactment of this Act, nothing in the Act restricts the Administrator from taking appropriate regulatory action with respect to the program after the authority vested in this Act terminates.

The President's FY 2005 budget request for the Small Business Administration did not include any funding for the loan programs authorized by §7(a) of the Small Business Act. Administrator Barreto testified at a full Committee hearing that the loan programs should be self-funding with a subsidy rate of zero and, as a result, the §7(a) lending programs would be on the same footing as the CDC and SBIC programs. Administrator Barreto's suggested mechanism for achieving a zero subsidy rate was through a mandatory expansion of the Express Loan Pilot Program to incorporate almost all smaller loans (initially all loans under $250,000 but in subsequent years could increase if needed to maintain a zero subsidy rate). The mandatory nature of the proposal did not garner

much acceptance among members of the House or Senate Small Business Committees.

Given Administrator Barreto's stated preference for resolving the funding crisis associated with the §7(a) lending programs through an expansion of express loans, the sponsors are concerned that the Administrator will take regulatory actions that unduly favor express lending over other types of lending authorized by §7(a) of the Small Business Act. As such, the sponsors determined that it was appropriate to impose certain restrictions on the Administrator's operation of the expanded Express Loan Pilot Program in order to prevent actions that unnecessarily and unduly favor express lending.

Any significant policy change in the operation of the lending programs authorized by §7(a) of the Small Business Act requires notification to the House and Senate Small Business Committees. Subsection 6(e) does not limit the restrictions imposed on the Administrator's regulatory discretion to those matters that would require notification pursuant to §7(a)(24) of the Small Business Act.

The most significant restriction is that the Administrator cannot take any action that directly forces a lender to make an express loan for any level. Thus, if a lender wishes to make an express loan for $1.5 million dollars and is a designated express lender, the lender may do so. If the same lender is qualified to make other types of loans and wants to make a $1.5 million dollar loan at a 75 percent guarantee, the Administrator may take no action that forces the lender to select the 50 percent guarantee over the 75 percent guarantee.

One mechanism for demonstrating favoritism is to impose conditions on loan programs other than express loans that have the effect of coercing lenders to make express loans. Paragraph (2) of subsection 6(e) ensures that the Administrator imposes like terms and conditions on both express and other lending programs authorized by §7(a) of the Small Business Act. The sponsors intend that this requirement apply to all of the terms and conditions of loans made pursuant to §7(a) of the Small Business Act, including collateral and the likelihood of repayment standards.

Even if the terms and conditions on the loans are identical, the Administrator has other mechanisms for demonstrating favoritism of express lenders over other types of Administrator-designated lenders. For example, the Administrator could delay processing of 75 percent guarantee loans, i.e., loans other than express loans, such that lenders would, for all practical terms, be required to do express loans. Thus, paragraph (3) of subsection 6(e) prevents the Administrator from making any personnel changes or altering the application of resources (be it personnel, equipment, or funding) that increases the loan processing and disbursement times for all loans authorized by §7(a) of the Small Business Act as those were in effect on October l, 2003. For example, if the time for disbursement of an express loan was five days and the time for disbursement of a 75 percent guaranteed loan was seven days, the Administrator may take no action that increases the relative disparity between the express loan and the 75 percent guarantee loan. Nothing in this subsection shall be interpreted to prevent the Administrator from improving the overall processing, approval, or disbursement rates of all loans except that any such improvements must affect all lenders and all lending programs operating pursuant to §7(a) of the Small Business Act in an identical manner.

To ensure that the sponsors' intent is clear that the expansion of the express loan is optional and the Administrator shall take no action that has the practical effect of making it mandatory, the sponsors incorporated a catchall requirement that the Administrator not take action to create incentives that would favor express loans over other types of loans. The sponsors believe that the determination of the appropriate nature of a loan should not be made by regulatory fiat but by the sound judgment of lenders, borrowers, and the Administrator's commercial loan officers.

The dramatic expansion of the express loan program, even on a temporary basis, may shed dramatic light on the purposes for which such loans are made. That information will be critical in resolving, on a long-term basis, the funding issues associated with the §7(a) lending programs. Therefore, the sponsors requested, to the extent practicable, monthly reports on the types and purposes for express loans made in excess of the current pilot program cap of $250,000.

Subsection 6(g) terminates the effectiveness of various subsections after September 30, 2004. Subsection (d) has its own internal sunset provision. No sunset is made on subsection (a), as it simply codifies existing practice of the Administrator with respect to definitions related to express loans. Nothing in subsection (g) is intended by the sponsors to constitute a permanent change in any program authorized pursuant to §7(a) of the Small Business Act.

Section 7. FY 2004 Deferred Participation Standards

As already noted, the sponsors are concerned that regulatory or other administrative changes in loan programs could have the practical implication of forcing lenders to make express loans. The sponsors determined that by freezing all terms and conditions of loans as they existed on October l, 2003 would be a sound means of deterring favoritism for express lending. The sponsors intend this provision to require, upon enactment, the lifting of the cap on loans made pursuant to §7(a) of the Small Business Act that are currently in place. Section (7) does permit the Administrator to modify those terms and conditions if needed to ensure continued operation of the program within the amounts appropriated. Although the sponsors, based on assertions by the Office of Management and Budget, believe that the Administrator will have sufficient funds through the end of the fiscal year to operate without any regulatory restraints, the sponsors do not want to prevent the Administrator from taking actions needed to prevent violations of the Anti-Deficiency Act. In other words, the sponsors fully expect the terms and conditions of October 1, 2003 to apply unless unusual and very unexpected consequences occur. Should such changes be necessary, nothing in H.R. 4062 repeals, either implicitly or explicitly, the notification requirements set forth in §7(a)(24).

Section 8. Temporary Increase in Loan Limit

Access to capital is vital to the growth of small businesses. Particularly for manufacturers and high technology research and development businesses, typical amounts of capital available under the loan programs authorized by §7(a) of the Small Business Act often are inadequate. If these manufacturers and high technology companies are investing to increase their productivity, the job creation requirements of Title V of the Small Business Investment Act may make it difficult, if not impossible, to obtain that type of financing. Therefore, the sponsors determined that it would be appropriate to temporarily increase the amount of the loan guarantee from $1 million to $1.5 million. No additional changes were made in the overall statutory cap of a gross $2 million loan. The sponsors did not believe that was necessary because any additional gaps in financing can be addressed using combination financing, under the terms of this Act. Given the fact that borrowers are getting an additional increment in loan guarantees, the sponsors determined that it would be appropriate to require an additional 0.25 percent fee for the amount of guarantee in excess of $1 million. Thus, on the amount of the guarantee between $1 million and $1.5 million, the upfront fee authorized pursuant to §7(a)(18) of the Small Business Act increases from 3.5 percent to 3.75 percent. This is consistent with typical commercial lending practices of charging fees that are commensurate with the lenders' exposure to risk.

IN RECOGNITION OF THE 1ST BATTALION, 69TH INFANTRY OF THE NEW YORK NATIONAL GUARD

HON. CAROLYN B. MALONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 22, 2004

Mrs. MALONEY. Mr. Speaker, I rise to recognize the soldiers of the 1st Battalion, 69th Infantry of the New York National Guard, who are currently preparing to serve their country in Iraq. Additionally, I would like to extend my appreciation and gratitude to all of our brave National Guard and Reserve soldiers, whose time, energy and sacrifice do so much to ensure the safety of our nation and fellow citizens.

Today's National Guard soldiers are part of a rich tradition in American life that stretches back to the Revolutionary War. At that time, our Founding Fathers placed the country's security in the hands of citizen-soldiers who organized and trained in their home states. The members of our current National Guard, in addition to demonstrating leadership in private enterprise, public service and a variety of other professions, must also be ready to put their ordinary lives "on hold"—often at a moment's notice—to serve their country.

The 1st Battalion, 69th Infantry has a distinguished history in both battle and disaster response. As part of the Irish Brigade during the Civil War, the 69th Infantry was famous for its tenacity on the battlefield and earned its nickname, "The Fighting 69th," from Confederate General Robert E. Lee. The 69th also took part in the Spanish-American War, World War I and World War II, where its soldiers fought in the battles of Makin, Saipan and Okinawa.

The regiment was initially formed by Irish-American residents of New York City; through the years, the unit has taken great pride in being a reflection of New York and its immigrant population. Today, the Battalion is an incredibly diverse group whose common goal is the protection of the American people.

The Fighting 69th are infantry soldiers—the "guns on the ground"—whose mission is to engage and destroy enemy forces in close combat. Upon deployment to Iraq, the Battalion will likely be asked to perform highly difficult and dangerous assignments. Despite the challenges that these men and women will likely encounter, their spirit and resolve is remarkable. Indeed, they are ready and eager to serve their country.

The Battalion has also mobilized during emergencies in their home state of New York. The Battalion Commander, Lt. Col. Geoffrey Slack, informs me that the Fighting 69th was